

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

UNITED STATES OF AMERICA)	
	)	Criminal No. 2:04cr
v.)	
	)	33 U.S.C. §§1311(a) & 1319(c)(2)(A)
RUDY J. LANIER	)	Clean Water Act
	)	(Counts 1-2)
and)	
	)	18 U.S.C. § 1001
ALL-STATE ENVIRONMENTAL	)	False Statements
DREDGING, INC.	)	Counts 3-4
)	
Defendants.	)	18 U.S.C. § 287
	)	False Claims
	)	Counts 5-6

I N D I C T M E N T

NOVEMBER 2004 TERM – At Norfolk, Virginia

COUNT ONE

THE GRAND JURY CHARGES THAT:

General Allegations

At all times material to this Indictment:

1. **Rudy J. Lanier** (“LANIER”) was the owner and president of **All State Environmental Dredging, Inc.** (“ALL STATE”), and personally managed the company’s affairs.
2. **ALL STATE** was a North Carolina corporation engaged in the business of marine dredging.

The Clean Water Act

3. The Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq., more commonly known as the Clean Water Act, was enacted by Congress to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Congress intended that the Clean Water Act would prevent, reduce and eliminate water pollution in the United States, and conserve the waters of the United States for the protection and propagation of fish and aquatic life and wildlife, and for recreational purposes. 33 U.S.C. § 1252(a).

4. The Clean Water Act prohibited the discharge of pollutants such as dredged spoil and sand into waters of the United States, including the Chesapeake Bay, except when in compliance with a permit issued by the Secretary of the Army, who has delegated that authority to the Army Corps of Engineers (“Army Corps”). 33 U.S.C. §§ 1311(a), 1344(a).

5. The term “discharge of a pollutant” is defined as the addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12)(A).

6. The term “navigable waters” means the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(8).

7. A “point source” is defined by the Clean Water Act as any discernible, confined and discrete conveyance from which pollutants are discharged, for example, a pipe, ditch, or channel. 33 U.S.C. § 1362(14).

The Tangier Island Dredging Contract

1. On or about March 10, 2000, the Army Corps District located in Norfolk, Virginia, issued Solicitation No. DACW65-00-B-0003 for Maintenance Dredging of the Tangier Channel and Basin, at Tangier Island. This dredging was intended to deepen the east-west channels between north and south islets that make up Tangier Island, which sits in the Chesapeake Bay and is part of Accomack County, Virginia.

1. The solicitation called for bids to dredge an estimated 65,000 cubic yards of material, which is known as dredged “spoil.” The solicitation explained that Tangier Channel to Tangier Sound (“the West Channel”) was to be dredged to a depth of nine feet; Tangier Channel to the Chesapeake Bay (“the East Channel”), along with the Basin that sat between the East and West legs of the channel, was to be dredged to a depth of eight feet.

2. On or about April 11, 2000, **LANIER** submitted a bid for the Tangier Island work, on behalf of **ALL STATE**. **LANIER**’s bid offered to dredge at a unit cost of \$2.00 per cubic yard, for a total estimated dredging expense of \$130,000. **LANIER**’s bid also contained costs of \$296,500.00 for mobilization and demobilization of the dredging operation, and consequently had a total cost of \$426,500.00.

3. On or about August 31, 2000, the Army Corps’ Contracting Officer awarded to **ALL STATE** Contract No. DACW65-00-C-0042 (“the Contract”), with an estimated value of \$426,500.00, to perform the maintenance dredging in Tangier Channel and Basin.

4. Contract section 01005 (1.1) required **ALL STATE** to deposit the dredged spoil via a pipeline at a designated “shoreline placement site,” and to conduct this work in compliance with two permits issued by the Commonwealth of Virginia.

a. The first of these permits was issued to the Army Corps by the Virginia Marine Resources Commission (“VMRC”). VMRC permit #95-0110 authorized the Army Corps to deposit spoil dredged from the Tangier Channel on a specified beach below the seawall on the southwestern shore of Tangier Island. This shoreline was prone to erosion, and the deposit of the dredged material below the seawall was designed to rebuild this beach, as well as to serve other environmental functions.

b. The second permit was issued to the Army Corps by the Virginia Department of Environmental Quality (“DEQ”). DEQ permit # 93-1088 authorized the dredging of Tangier Channel and the deposit of dredged spoil at the shoreline placement site mentioned above, and imposed a number of conditions on that activity that were designed to protect water quality.

5. The Contract required that dredging be completed within 50 calendar days, but allowed extensions of this deadline for delays caused by bad weather. Unexcused delays were grounds for payment deductions by the Army Corps. Under the Contract’s “liquidated damages” provision, **ALL STATE** would forfeit \$290.00 of the amount it otherwise earned for each day of unexcused delay.

6. On or about September 18, 2000, **LANIER** attended a preconstruction meeting between the Army Corps and **ALL STATE**. **LANIER** subsequently signed written minutes of that meeting which state “Dredged material shall be placed in accordance with the Specifications

and amendments.”

7. On or about September 25, 2000, **ALL STATE**’s Construction Quality Control Manager provided a Notice of Intent to Dredge letter to the Virginia Department of Environmental Quality. The letter stated: “The dredged material will be used for beach nourishment on the western shore of Tangier Island. We shall employ due diligence and do not anticipate any impact on the water quality standards as prescribed.”

The Defendants’ Dredging Operation

8. On or about October 16, 2000, **ALL STATE** began dredging operations in the West Channel. The dredging operations ran 24 hours per day, with two separate crews working alternating shifts around the clock.

9. The **ALL STATE** employee in charge of the crew was called the “leverman.” He ensured that the dredge and other equipment were properly located while supervising the other workers. **ALL STATE** and **LANIER** employed two levermen, who worked alternating shifts on the dredging project .

10. **LANIER** designated himself as the project superintendent; he also served as the “dump man” – that is, the person who was supposed to monitor the deposit of dredged spoil at the shoreline placement site on the island’s western side.

11. During the project’s first phase, in mid-October, **ALL STATE**’s pipeline ran from the West Channel along the island’s western shore to the shoreline placement site on the southwest side of the island. This was a distance of approximately 8000 feet, and **ALL STATE** was able to transport the dredged material through its pipeline to the shoreline placement site

without relying on a supplemental or “booster” pump. **ALL STATE** completed its work in the West Channel by on or about October 24, 2000.

12. During **ALL STATE**’s early dredging of the East Channel, as well as during the dredging of the Basin, the discharge pipeline ran across the sand flats in Mail Boat Harbor, on Tangier Island’s east side; from there the line ran along the south/southeast side of the island, inside of Cod Harbor, and across a peninsula to the shoreline placement site.

13. Much of the East Channel contained sand that was difficult for **ALL STATE** to move through its pipeline to the disposal site -- a distance of more than two miles. As a result, **ALL STATE**’s pipeline repeatedly became clogged and sometimes broke. This required the crew to stop dredging and attend to the clogged or broken pipeline. These halts to dredging in turn delayed **ALL STATE**’s progress and raised the possibility that the company would fail to meet the Contract’s 50-day completion deadline.

14. In mid-November 2000, **ALL STATE** brought in a booster pump in an attempt to facilitate movement of the sand through the long pipeline. However, **LANIER** placed the booster pump at the dredge, rather than in the middle of the pipeline – a decision which allowed **LANIER** to avoid employing extra personnel to work a remotely-located booster pump. Despite the use of the booster pump, the pipeline continued to clog, causing further delays in **ALL-STATE**’s dredging work.

The Defendants’ Illegal Discharges of Dredged Material

15. On or about November 23, 2000, which was Thanksgiving, while **ALL STATE** was dredging in the East Channel, the pipeline clogged once more. In response, **LANIER** directed

his levermen to uncouple the pipeline in the area of the sand flats on the island's east side, to move the discharge end of the pipe east, and to discharge the spoil into the Chesapeake Bay.

LANIER further instructed the employees to leave the clogged portion of the pipe where it was, running to the shoreline disposal site. **LANIER** explained that, if the discharge into the Bay off the eastern shore of the island were detected, leaving the clogged lower portion of the pipeline in place would allow him to call the illegal discharge unintentional, and attribute the discharge to a pipeline break.

16. After dark on or about November 23, 2000, **ALL STATE**'s crew carried out **LANIER**'s order. The men unhooked the pipe in the middle of its reach toward the disposal site, and moved the discharge end of the now-shortened pipe east into the Chesapeake Bay. After the crew resumed dredging, however, the current carried the discharging end of the pipe back toward the island. As a result, for several days **ALL STATE** pumped spoil to the sand flats off the island's eastern shore. A mound of discharged spoil would build up due to this activity, and then the mound would be washed back down by the action of the tide.

17. On or about November 24, 2000, in the Eastern District of Virginia, the Defendants, **RUDY J. LANIER** and **ALL STATE**, knowingly discharged pollutants from a point source into waters of the United States without a permit, by intentionally operating the dredge so that it discharged spoil into the Chesapeake Bay east of Tangier Island, rather than transporting the spoil to the approved shoreline placement site

(In violation of Title 33 United States Code, Sections 1311(a) and 1319(c)(2)(A), and Title 18 United States Code Section 2.)

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

17. Paragraphs 1 through 24 of Count One are realleged and incorporated by reference herein.

18. After several days of pumping spoil to the shallow waters of the flats east of Tangier Island in late November 2000, **ALL STATE**'s levermen shut down the dredge and informed **LANIER** of their concern that the illegal discharges would be detected. **ALL STATE** then proceeded to dredge the basin, where the material removed was more silt than sand and easier to move through the pipeline.

19. After completing the basin, **ALL STATE** returned to the East Channel, where dredging was more difficult. **LANIER** subsequently instructed the levermen to once again redirect the discharging end of the pipe to the east, this time out to the shipping channel near a navigational marker called "Green Can #3." **LANIER** told the men to discharge the dredged spoil into the Chesapeake Bay at that location, which has a depth of approximately 50 feet.

20. After dark on a date in December 2000 or January 2001 unknown to the Grand Jury, **ALL STATE**'s crew carried out **LANIER**'s order. **ALL STATE**'s crew then began to discharge the spoil from Tangier Channel into the Chesapeake Bay near Green Can #3.

21. On or about January 2001, in the Eastern District of Virginia, the Defendants, **RUDY J. LANIER** and **ALL STATE**, did knowingly discharge pollutants from a point source into waters of the United States without a permit, by intentionally operating the dredge so that it discharged spoil into the Chesapeake Bay near Green Can #3, rather than transporting the spoil to

the approved shoreline placement site

(In violation of Title 33 United States Code Sections 1311(a) and 1319(c)(2)(A) and Title 18 United States Code, Section 2.)

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

Paragraphs 1 through 24 of Count One and paragraphs 27-29 of Count Two are realleged and incorporated by reference herein.

22. An inspector from the Army Corps periodically traveled to Tangier Island to inspect **ALL STATE**'s dredging operation. On January 9, 2001, a member of **ALL STATE**'s dredging crew contacted the Corps' inspector, requested anonymity, and informed the inspector that for approximately two weeks **LANIER** had been instructing the dredge crews to "short pump" – that is, to discharge the spoil somewhere other than the approved disposal site. The **ALL STATE** employee explained that the "short-pumping" was being conducted because the company was experiencing difficulty transporting the spoil to the shoreline placement site.

23. The Army Corps inspector traveled to the island to perform inspections on the mailboat from the mainland. After **ALL STATE**'s dredging crew began discharging spoil into the Chesapeake Bay east of the Island, **LANIER** instructed the **ALL STATE** crew to shut down the dredge upon receipt of his warning that the inspector was approaching. **LANIER** further instructed the crew to tell the inspector when he arrived that the operation was experiencing mechanical difficulties. This ruse was designed to prevent the inspector from observing that **ALL STATE**'s dredging activity was discharging no material to the approved shoreline placement site.

24. On January 10, 2001, after receiving information from **ALL STATE's** leverman regarding short-pumping, the Army Corps inspector traveled to the island to inspect the dredging operation. The inspector found the dredge inactive, and went with **LANIER** to the shoreline placement site. **LANIER** explained the lack of any evidence of recent deposits at the site by falsely claiming that the dredge had been inactive for nearly three days. In fact, as shown by **ALL STATE's** own records, the crew had dredged more than 2700 cubic yards of material during the previous two days.

25. On or about January 10, in the Eastern District of Virginia, the Defendants, **RUDY J. LANIER and ALL STATE**, did knowingly and willfully make a materially false and fraudulent statement in a matter within the jurisdiction of the executive branch of the United States, in that **LANIER and ALL STATE** informed the Army Corps inspector that **ALL STATE's** dredge had been inactive for several days, when in fact defendants knew then and there that spoil dredged from the East Channel during the previous two days had actually been discharged on **LANIER's** orders into the Chesapeake Bay east of Tangier Island.

(In violation of Title 18 United States Code, Sections 1001 and 2).

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

25. Paragraphs 1 through 24 of Count One and paragraphs 27-29 of Count Two are realleged and incorporated by reference herein.

26. In order to determine whether **ALL STATE** should be fully paid for its dredging work, the Army Corps further investigated the allegation that the company had "short-pumped" some of the spoil dredged from Tangier Channel. On January 12, 2001, Army Corps personnel

conducted an underwater survey near Green Can #3. The surveyors detected a large mound of material on the floor of the Chesapeake Bay. They measured and sampled the mound, which was 93.3% sand and 6.7% clay – quite different from the composition of the Bay’s natural floor, which samples from surrounding locations showed to be 9% sand and 91% silt and clay.

27. On or about January 16, 2001, **LANIER** met with the Army Corps Contracting Officer Representative to discuss the allegations of “short-pumping” and other matters. **LANIER** denied that any intentional short-pumping had occurred. In a follow-up letter to the Army Corps dated January 31, 2001, he referenced the January 16 meeting and repeated his claim, writing that the short-pumping allegation “was not true and that it was a disgruntled employee making these allegations.”

28. On or about January 16, in the Eastern District of Virginia, the Defendants, **RUDY J. LANIER and ALL STATE**, did knowingly and willfully make a materially false and fraudulent statement in a matter within the jurisdiction of the executive branch of the United States, in that **LANIER and ALL STATE** informed the Army Corps Contracting Officer Representative that **ALL STATE** had transported all spoil dredged from the Tangier Channel and Basin to the approved shoreline placement site, when in fact defendants knew then and there that spoil dredged from the East Channel had actually been discharged elsewhere, at the locations described in Counts One and Two, on **LANIER**’s orders.

(In violation of Title 18 United States Code, Sections 1001 and 2.)

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

29. Paragraphs 1 through 24 of Count One and paragraphs 27-29 of Count Two are

realleged and incorporated by reference herein.

30. Defendants **RUDY J. LANIER** and **ALL STATE** were fully aware that the Contract required all dredged material to be placed at the designated shoreline placement site on Tangier Island.

31. On or about August 30, 2001, **LANIER** submitted to the Army Corps a letter and accompanying documentation to certify his final request for payment. The three pages of attached documentation, which was signed by **LANIER**, stated that **ALL STATE** had dredged a total of 56,870 cubic yards of material, more than 42,000 cubic yards of which had come from the East Channel. Based on **ALL STATE**'s bid rate of \$2.00 per cubic yard, **LANIER**'s documentation claimed that **ALL STATE** had earned \$113,740.00 for dredging and another \$296,500.00, for a total of \$410,240.00.

32. On or about August 30, 2001, in the Eastern District of Virginia, defendants **RUDY J. LANIER and ALL STATE** knowingly submitted a false claim to a department of the United States, by intentionally submitting a request for payment to the Army Corps for dredged material that defendants knew was required by Contract to have been deposited at the Tangier Island designated shoreline placement site, when in fact defendants **RUDY J. LANIER and ALL STATE** knew that the material had been discharged into the Chesapeake Bay east of Tangier Island.

(In violation of Title 18 United States Code, Sections 287 and 2).

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

33. Paragraphs 1 through 24 of Count One and paragraphs 27-29 of Count Two are

realleged and incorporated by reference herein.

34. Defendants **RUDY J. LANIER** and **ALL STATE** were fully aware that the Contract contained a deadline by which work was to be completed, and that unexcused delays after that deadline would subject **ALL STATE** to liquidated damages.

35. During the period October 15, 2000 through January 25, 2001 **ALL STATE** submitted to the Army Corps a daily Report of Operations, on a standard Army Corps form known as ENG Form 4267 ("Form 4267"). One portion of Form 4267 showed the "Distribution of Time" during the relevant day, and contained two categories called "Effective Working Time" and "Non-Effective Working Time." The latter category allowed **ALL STATE** to itemize non-effective working time by reference to 19 subcategories, such as "Clearing Pump and Pipeline," "Waiting for Booster [Pump]," "Fire Drill," or "Sundays and Holidays." Among these 19 subcategories of non-effective working time, only one entry could extend **ALL STATE**'s 50-day deadline by which to complete the work or face liquidated damages: "Loss due to Opposing Natural Elements." Under that subcategory, **ALL STATE** was to give a daily account, measured in hours and minutes, of any delay it had suffered due to unsafe working conditions created by inclement weather.

36. As delays to **ALL STATE**'s dredging operation mounted because of the aforementioned pipeline clogs and breaks, **LANIER** instructed **ALL STATE**'s Construction Quality Control Manager to falsify entries on the Form 4267s. **LANIER** instructed his subordinate to categorize time that was actually lost due to mechanical problems as weather delays, in order to extend the 50-day completion deadline and avoid liquidated damages. The **ALL STATE** Construction Quality Control Manager complied with **LANIER**'s instructions.

37. On or about August 30, 2001, in the Eastern District of Virginia, defendants **RUDY**

J. LANIER and ALL STATE knowingly submitted a false claim to a department of the United States, by knowingly submitting to the Army Corps a request for payment for dredging work in excess of the amount actually owed to **ALL STATE**, after having concealed through the submission of false Form 4267s **ALL STATE**'s liability for liquidated damages related to the project's missed completion deadline.

(In violation of Title 18 United States Code, Sections 287 and 2.)

A TRUE BILL

FOREPERSON

Paul J. McNulty
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By:

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